

HOUSE No. 2663

By Mrs. Canavan of Brockton, petition of Christine E. Canavan and others for legislation to ensure quality care for patients and adequate staffing of registered nurses. Public Health.

The Commonwealth of Massachusetts

PETITION OF:

Christine E. Canavan	Matthew C. Patrick
Marc R. Pacheco	Byron Rushing
William C. Galvin	Kathleen M. Teahan
Joyce A. Spiliotis	Rachel Kaprielian
Lida E. Harkins	Geraldine M. Creedon
Ellen Story	Jennifer M. Callahan
Brian Knuuttila	Susan C. Fargo
David P. Linsky	Robert L. Hedlund
Cleon H. Turner	Steven A. Tolman
Robert K. Coughlin	Mark V. Falzone
Shirley Gomes	Thomas M. Stanley
Robert A. DeLeo	Louis L. Kafka
Michael A. Costello	Robert J. Nyman
Michael E. Festa	Thomas P. Kennedy
Edward G. Connolly	Patrick M. Natale
Peter V. Kocot	Timothy J. Toomey, Jr.
Paul J. Donato	Brian P. Golden
John J. Binienda	Michael F. Rush
Joseph P. Driscoll	Christopher G. Fallon
Garrett J. Bradley	John P. Fresolo
Patricia D. Jehlen	Elizabeth A. Malia
J. James Marzilli, Jr.	Benjamin Swan
Thomas J. O'Brien	Steven M. Walsh
Robert P. Spellane	Bruce E. Tarr
Emile J. Goguen	Vincent A. Pedone
Jennifer L. Flanagan	Patricia A. Haddad
Frank M. Hynes	Robert A. Antonioni
Barbara A. L'Italien	Edward M. Augustus, Jr.
James E. Vallee	Harriette L. Chandler

Michael R. Knapik	A. Stephen Tobin
Pamela P. Resor	Colleen M. Garry
Marian Walsh	James E. Timilty
Ruth B. Balser	Walter F. Timilty
Michael J. Rodrigues	Robert A. O’Leary
Anthony J. Verga	Mary E. Grant
Alice K. Wolf	Brian A. Joyce
Richard R. Tisei	Demetrius J. Atsalis
Kathi-Anne Reinstein	Marie J. Parente
Shirley Owens-Hicks	Peter J. Koutoujian
Robert S. Creedon, Jr.	Brian S. Dempsey
Marie P. St. Fleur	Dianne Wilkerson
Gloria L. Fox	James B. Eldridge
James R. Miceli	Anne M. Paulsen
Martin J. Walsh	John A. Hart
Anne M. Gobi	Thomas M. McGee
Deborah D. Blumer	Susan C. Tucker
John W. Scibak	Alice Hanlon Peisch
Frank I. Smizik	Theodore C. Speliotis
Carl M. Sciartino, Jr.	Denis E. Guyer
David L. Flynn	Paul Kujawski
Joseph F. Wagner	Mark J. Carron
Mark C. Montigny	Jeffrey Sánchez
Stephen M. Brewer	

In the Year Two Thousand and Five.

AN ACT ENSURING PATIENT SAFETY.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 Chapter 111 of the General Laws is hereby amended by adding
- 2 the following section:—
- 3 Section 219. (a) As used in this section, the following words,
- 4 shall, unless the context clearly require otherwise, have the
- 5 following meanings:—

6 “Acuity-based patient classification system”, a standardized set
7 of criteria based on scientific data that acts as a measurement
8 instrument which predicts registered nursing care requirements for
9 individual patients based on severity of patient illness, need for
10 specialized equipment and technology, intensity of nursing inter-
11 ventions required and the complexity of clinical nursing judgment
12 needed to design, implement and evaluate the patient’s nursing
13 care plan consistent with professional standards of care, details
14 the amount of registered nursing care needed, both in number of
15 direct-care registered nurses and skill mix of nursing personnel
16 required on a daily basis for each patient in a nursing department
17 or unit and is stated in terms that readily can be used and under-
18 stood by direct-care registered nurses. The acuity system criteria
19 shall take into consideration the patient care services provided not
20 only by registered nurses but also by licensed practical nurses and
21 other health care personnel.

22 “Assessment tool”, a measurement system which compares the
23 registered nurse staffing level in each nursing department or unit
24 against actual patient nursing care requirements in order to review
25 the accuracy of an acuity system.

26 “Board”, the board of registration in nursing.

27 “Department”, the department of public health.

28 “Direct-care registered nurse”, a registered nurse who has
29 accepted direct responsibility and accountability to carry out med-
30 ical regimens, nursing or other bedside care for patients.

31 “Facility”, a hospital licensed pursuant to section 51 of
32 chapter 111 of the general laws, the teaching hospital of the uni-
33 versity of massachusetts medical school, any licensed private or
34 state-owned and operated general acute care hospital, an acute
35 psychiatric hospital, a specialty hospital, or any acute care unit
36 within a state operated facility.

37 “Nursing care”, care which falls within the scope of practice as
38 prescribed by state law or otherwise encompassed within recog-
39 nized professional standards of nursing practice, including assess-
40 ment, nursing diagnosis, planning, intervention, evaluation and
41 patient advocacy.

42 “Ratio”, the actual number of patients to be assigned to each
43 direct care registered nurse.

44 (b) The department of public health shall have the power and
45 its duty shall be:

46 (1) to promulgate the rules and regulations necessary to carry
47 out the purposes and provisions of this chapter, including regula-
48 tions defining terms, and prescribing the process for establishing a
49 standardized acuity-based patient classification system.

50 (2) to assure that the provisions of this chapter and all rules and
51 regulations promulgated under this chapter are enforced; and to
52 promulgate, within one year of the effective date of this chapter,
53 regulations providing for an accessible and confidential system to
54 report any failure to comply with requirements of this chapter and
55 public access to information regarding reports of inspections,
56 results, deficiencies and corrections under this chapter.

57 (3) to develop within one year of passage of this act a standard-
58 ized acuity-based patient classification system as defined in
59 section (a) to be utilized by all facilities to increase the number of
60 direct care registered nurses to meet patient needs.

61 (c) Each facility, as defined in paragraph (a) shall incorporate
62 and maintain the following minimum direct-care registered nurse-
63 to-patient ratios:—

64 Intensive Care Unit: 1:2

65 Critical Care Unit 1:2

66 Neo-natal Intensive Care 1:2

67 Burn Unit 1:2

68 Step-down/Intermediate Care 1:3

69 Operating Room

70 RN as Circulator 1:1

71 RN as monitor in moderate sedation cases 2:1

72 Post Anesthesia Care Unit

73 Under Anesthesia 1:1

74 Post Anesthesia 1:2

75 Emergency Department 1:3*

76 Emergency Critical care 1:2*

77 Emergency Trauma 1:1*

78 * The triage, radio, or other specialty registered nurse shall not
79 be counted as part of this number.

80 Labor and Delivery

81 Active Labor 1:1

82 Immediate Postpartum 1:2 (one couplet)

83 Postpartum 1:6 (three couplets)
84 Intermediate Care Nursery 1:4
85 Well-Baby Nursery 1:6
86 Pediatrics 1:4
87 Psychiatric 1:4
88 Medical and Surgical 1:4
89 Telemetry 1:4
90 Observational/Out patient treatment 1:4
91 Transitional Care 1:5
92 Rehabilitation Unit 1:5
93 Specialty Care Unit, any unit not otherwise listed above shall
94 be considered a specialty care unit 1:4
95 These ratios shall constitute the minimum number of direct-
96 care registered nurses. Additional direct-care registered nurses
97 shall be added and the ratio adjusted to ensure direct-care regis-
98 tered nurse staffing in accordance with an approved acuity-based
99 patient classification system. Nothing herein shall be deemed to
100 preclude any facility from increasing the number of direct-care
101 registered nurses, nor shall the requirements set forth be deemed
102 to supersede or replace any requirements otherwise mandated by
103 law, regulation or collective bargaining contract so long as the
104 facility meets the minimum requirements outlined.
105 (d) As a condition of licensing, each facility annually shall
106 submit to the department a prospective staffing plan together with
107 a written certification that the staffing plan is sufficient to provide
108 adequate and appropriate delivery of health care services to
109 patients for the ensuing year and does all of the following:
110 1) meets the minimum direct care registered nurse-to-patient
111 ratio requirements of paragraph (c);
112 2) employs the acuity-based patient classification system for
113 addressing fluctuations in patient acuity levels requiring increased
114 registered nurse staffing levels above the minimums set forth in
115 said paragraph (c);
116 3) provides for orientation of registered nursing staff to
117 assigned clinical practice areas, including temporary assignments;
118 4) includes other unit or department activity such as discharges,
119 transfers and admissions, administrative and support tasks that are
120 expected to be done by direct-care registered nurses in addition to
121 direct nursing care;

122 5) submits the assessment tool used to validate the acuity
123 system relied upon in the plan.

124 As a condition of licensing, each facility annually shall submit
125 to the department an audit of the preceding year's staffing plan as
126 dictated in clauses (1) to (5), inclusive. The audit shall compare
127 the staffing plan with measurements of actual staffing as well as
128 measurements of actual acuity for all units within the facility.

129 (e) As a condition of licensing, a facility required to have a
130 staffing plan under this chapter shall:

131 (1) prominently post on each unit the daily written nurse
132 staffing plan to reflect the registered nurse-to-patient ratio means
133 of consumer information and protection.

134 (2) provide each patient and/or family member with a toll-free
135 hotline number for the Division of Health Care Quality at the
136 department, which may be used to report inadequate registered
137 nurse staffing. Such complaint shall cause investigation by the
138 department within 24 hours to determine whether any violation of
139 law or regulation by the facility has occurred.

140 (f) No facility may directly assign any unlicensed personnel to
141 perform nondelegatable licensed nurse functions in-lieu of care
142 delivered by a licensed registered nurse. Additionally, unlicensed
143 personnel are prohibited from performing tasks, which require the
144 clinical assessment, judgment and skill of a licensed registered
145 nurse. Such functions shall include, but are not limited:

146 (1) Nursing activities which require nursing assessment and
147 judgment during implementation;

148 (2) Physical, psychological, and social assessment which
149 requires nursing judgment, intervention, referral or follow-up;

150 (3) Formulation of the plan of nursing care and evaluation of
151 the patient's/client's response to the care provided; and

152 (4) Administration of medications.

153 (5) Health teaching and health counseling.

154 (g) Such rules and regulations shall require that a full time reg-
155 istered nurse executive leader be employed by each facility to be
156 responsible for the overall execution of resources to ensure suffi-
157 cient registered nurse staffing is provided by said facility.

158 (h) Such rules and regulations shall require that a full time reg-
159 istered nurse be designated by the facility to be responsible for the
160 overall quality assurance of nursing care as provided by the
161 facility.

162 (i) Such rules and regulations shall require that a full time reg-
163 istered nurse be designated by each facility to ensure the overall
164 occupational health and safety of nursing staff employed by said
165 facility.

166 (j) Appropriate Orientation. For purposes of compliance with
167 this act no registered nurse shall be assigned to a unit or a clinical
168 area within a health facility unless that registered nurse has an
169 appropriate orientation in that clinical area sufficient to provide
170 competent nursing care to the patients in that area, and has
171 demonstrated current competence in providing care in that area.

172 There shall be a written, organized in-service education plan for
173 providing orientation and competency validation for all patient
174 care personnel.

175 (1) All patient care personnel shall complete orientation to the
176 hospital and their assigned patients and patient care unit or units
177 before receiving patient care assignments.

178 (2) All patient care personnel shall be subject to the process of
179 competency validation for their assigned patients and patient care
180 unit or units.

181 (3) Prior to the completion of validation of the competency
182 standards for the patient care unit, patient care assignments shall
183 be subject to the following restrictions:

184 (a) Assignments shall include only those duties and responsibil-
185 ities for which competency has been validated.

186 (b) A registered nurse who has demonstrated competency for
187 the patient care unit shall be responsible for the nursing care, and
188 shall be assigned as a resource nurse for those registered nurses
189 who have not completed validation for that unit.

190 (c) Registered nurses shall not be assigned total patient respon-
191 sibility for patient care until all the standards of competency for
192 that unit have been validated.

193 (4) Orientation and competency validation shall be documented
194 in the employee's file and shall be retained for the duration of the
195 individual's employment.

196 (5) The staff education and training program shall be based on
197 current standards of nursing practice, established standards of
198 staff performance, individual staff needs and needs identified in
199 the quality assurance process.

200 (k) For purposes of compliance with the minimum staffing
201 requirements set forth under this chapter, except in cases of
202 national or state declared emergencies, no facility may employ
203 mandatory overtime or mandatory on-call policies. Mandatory
204 overtime shall mean any employer request with respect to over-
205 time, which if refused or declined by the employee, may result in
206 an adverse employment consequence to the employee. The term
207 overtime with respect to an employee, means any hours that
208 exceeds the predetermined number of hours that the employer and
209 employee have agreed that the employee would work during the
210 shift or week involved.

211 (l) The setting of staffing standards for registered nurses is not
212 to be interpreted as justifying the understaffing of other critical
213 health care workers, including licensed practical nurses and unli-
214 censed assistive personnel. The availability of these other health
215 care workers enables registered nurses to focus on the nursing
216 care functions that only registered nurses, by law, are permitted to
217 perform and thereby helps to ensure adequate staffing levels.

218 (m) Any facility that fails to anticipate, design, maintain or
219 adhere to a daily written nurse staffing plan in accordance with
220 the provisions of this section, or any rule or regulation promul-
221 gated hereunder, (1) shall be subject to revocation of said facility's
222 license or registration, or by a fine of not more than twenty-five
223 thousand dollars, or both, (2) shall be subject to a civil penalty of
224 not more than twenty-five thousand dollars, for each such viola-
225 tion. Each day each such violation occurs or continues shall be
226 deemed a separate offense. These penalties shall be in addition to
227 any other penalties that may be prescribed by law. The department
228 shall have jurisdiction to coordinate enforcement related activi-
229 ties. The civil penalty may be assessed in any action brought on
230 behalf of the Commonwealth or on behalf of any patient or resi-
231 dent aggrieved hereunder in any court of competent jurisdiction.

232 Fines relative to said violations shall be collected and distrib-
233 uted to the Betsy Lehman center for patient safety and medical
234 error reduction, created by section 7 of chapter 177 of the acts of
235 2001.

236 Each facility found in violation of said plan must prominently
237 post its violation notice within each unit in violation. Copies of
238 the notice shall be posted by the facility immediately upon receipt

239 and maintained for 60 consecutive days in conspicuous places
240 including all places where notices to employees are customarily
241 posted. Reasonable steps shall be taken by the facility to ensure
242 that the notices are not altered, defaced, or covered by any other
243 material. The department will post said violation notices on its
244 website immediately after a finding of a violation. The notice
245 shall remain on the department's website for 60 consecutive days
246 or until such violation is rectified, whichever is greater.